

REMARKS/ARGUMENTS

Claims 1-37 were pending at the time of the mailing of the outstanding Office Action. Claims 14-37 were withdrawn from consideration. By this amendment, claims 1, 4, 7, 8, 10, 12 and 27 have been amended. Claims 2 and 3 have been cancelled without prejudice or disclaimer as to the subject matter contained therein. No new claims have been added.

In the Office Action of December 29, 2008, the Examiner objected to claims 2-4 because they recited nonelected inventions and because claim 4 repeats the word “the.” Claims 1-13 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description and enablement requirements. The Examiner indicated that the specification satisfied the written description requirements for SEQ. ID. NO. 1. Claims 1-13 were also rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failure to point out and distinctly claim the subject matter of the invention. Claim 2 was considered to be indefinite for the use of the phrase “cell wall extract.” Under 35 U.S.C. § 102(b), claims 1, 2 and 7-13 were rejected as anticipated by Weinberg et al. (Int. Pub. No WO99/64439).

Claim 1 has been amended to recite that the polypeptide comprises SEQ ID NO.: 1. Claim 4 has been amended to eliminate repetition of the word “the.” Claims 2 and 3 have been cancelled.

The Applicant maintains that claim 1, as amended, satisfies the written description and enablement requirements of 35 U.S.C. § 112, first paragraph. The specification both describes and enables claim 1 as amended. Similarly, the Applicant maintains that claim 1 also satisfies the requirements of 35 U.S.C. § 112, second paragraph and is not indefinite. No recitation is now made regarding a “cell wall extract.” Furthermore, because claim 1 recites that the FAD-1 polypeptide comprises SEQ ID NO.: 1, as originally recited in claim 3, claim 1 patentably distinguishes over WO99/64439. Withdrawal of the objections to the claims, as well as the rejections under 35 U.S.C. §§ 102(b), and 112, first and second paragraphs, is respectfully requested.

The outstanding Office action was electronically transmitted on December 29, 2008. The Examiner set a shortened statutory period for reply of 3 month or 90 days from the mailing date. Therefore, a petition for a one month extension of time is hereby made with this response. Additionally, the Applicant also hereby makes a conditional petition for any additional extension of time for response in the event that such a petition is required.

The Commissioner is authorized to charge any fee or to credit any overpayment associated with the filing of this paper to Deposit Account 15-0450.

Respectfully submitted,

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